



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Multistate Tax Commission
 Uniformity Committee Meeting
 Sheraton Hotel and Suites
 5151 East Grant Road
 Tucson, AZ 85712
 March 11 and 12, 2008
 Minutes of Meeting

The following persons attended one or more sessions of the Uniformity Committee Meeting:

Name	State or Affiliation	Name	State or Affiliation
Chris Sherlock	AL DOR	Brandon Seibel	SD DOR
Helen Kushel	AZ DOR	Nancy Prosser	TX CPA
Ben Miller	CA FTB	Frank Hales	UT DOR
Phil Horwitz	CO DOR	Rod Marelli	
Joe Thomas	CT DOR	Jan Bianchi	WA DOR
John Kutsukos		Craig Griffith	WV DOR
Charles Wilson	DC DOR	Private Sector	
Nancy Tucker		Fran Mordi	American Bankers' Ass'n.
Marshall Stranburg	FL DOR	Deborah Bierbaum	AT & T
Anita DeGumbia	GA DOR	Beth Cooley	COST
Randy Tilley	ID DOR	Todd Lard	
Reva Tisdale		Brian Smith	DirecTV
Ted Spangler, Chair Uniformity Committee		Dan Robillard	Expedia
Brian Fliflet	IL DOR	John Pydyszewski	J & J
Richard Cram, Chair Sales/Use Tax Subcommittee	KS DOR	John Allan	Jones Day
Earl Millet Jr.	LA DOR	Ferdinand Hargroian	PwC
Michael Fatale	MA DOR	John Buhl	State Tax Notes
Dale Vettel	MI DOR	Diann Smith	Sutherland, et. al.
Keith Getschel	MN DOR	Jamie Fenwick	Time Warner Cable
Wood Miller, Chair, Income/Franchise Tax Subcommittee	MO DOR	MTC Staff	
Brenda Gilmer	MT DOR	Joe Huddleston	Elliott Dubin
Eugene Walborn		Shirley Sicilian	Cathy Felix
Lee Baerlocher		Bruce Fort	Harold Jennings

Name	State or Affiliation	Name	State or Affiliation
Lennie Collins	NC DOR	Ken Beier	Sheldon Laskin
Donnita Wald	ND DOR	Roxanne Bland	Ken Morrow
Mary Loftsgard		Mike Bontrager	Jeff Silver
Charles Langston	NM DOR		
Rebecca Abbo			
Eric Smith	OR DOR		
Janielle Lipsomb			
Marilyn Harbur			

Sales and Use Tax Uniformity Subcommittee

March 11, 2008

1:00 P.M. to 5:00 P.M.

I. Welcome and Introductions

Richard Cram, Subcommittee Chair, welcomed the attendees.

II Public Comment

There was no public comment at this time.

III Reports and Updates

A. Report on Commission Action on Uniformity Projects

1. Model Audit Sampling and Authorization Statute and Regulation

Roxanne Bland, MTC Counsel, was the Hearing Officer for this project and gave the report. Ms. Bland told the members of the Subcommittee that the Executive Committee approved this project for a Bylaw 7 survey at their January meeting in San Diego. The survey was sent to the affected states in February and was due back by April 10th.

B. Federal Issues Affecting State Taxation

Roxanne Bland presented the Federal issues report.

1. Sales Tax Fairness and Simplification Act – S. 34 and H.R. 3396: One of the issues that need to be resolved is whether Native American tribes could have membership in the project; the House version has no provision for tribal membership.
2. End Discriminatory Taxation of Automobile Renters Act of 2007 – H.R. 2453: This proposed legislation is similar to the 4R Act. No hearing dates have been set.
3. Cell Phone Tax Moratorium Act of 2007—S 166; H.R. 436: No hearing dates have been scheduled; Congress is more interested in FISA.

4. State Video Tax Fairness Act of 2007—H.R 3679: This Act prohibits discriminatory taxes on multichannel video programming.
5. Mobile Workforce State Income Tax Fairness and Simplification Act of 2007—H.R. 3359: Business and NGA are working on compromise language.
6. Travel Intermediaries Legislation: No legislation has been introduced as yet.

IV. Accommodations Intermediaries Project:

A. Review of Third Draft of Accommodation Tax Proposal

1. The draft proposal excludes travel agents and tour operators from the definition of accommodations intermediaries.
2. The subcommittee directed the drafting group to include definitions of “tour operator” and “travel agent”, using the Washington State’s definition as an example, so as not to inadvertently include these within the scope of the proposal, unless they are operating as an intermediary.
3. A dual track remittance system, if simplified, could be useful for the subcommittee.
4. The issue was raised as to whether the tax should be based on a gross receipts model rather than a sales tax model.
5. The subcommittee also discussed whether to change the definition of accommodation fees such as adding sections d and e. [Note: Sections (d) and (e) were already in the proposal.]

The subcommittee discussed two options:

1. A single track remittance system and adding a paragraph if the intermediary goes bankrupt.
2. A dual remittance track where the operator remits tax based on the wholesale price and the intermediary remits tax on the facilitation fee.

UT moved and Idaho seconded the motion to adopt the dual remittance track. The motion carried by voice vote.

V. Telecommunications Transactions Project.

Roxanne Bland explained the three forms of possible formats for streamlining the collection of local transactions taxes on telecommunications services:

1. Complete state administration and collection. Revenues would be apportioned to the local governments according to a prearranged formula.
2. State administration of a locally imposed tax. The state would administer the tax but the telecommunications service providers must tell the states which localities are to receive the revenues, and how much they should receive.
3. Locally administered taxes through a locally sponsored entity – no state administrative involvement, however, the definitions etc. must conform to the Streamlined Sales and Use Tax Act.

Ms. Bland stated that local governments could submit written or oral comments.

Jamie Fenwick of Time Warner Cable wanted local franchise taxes to be included in the definition of transactions tax.

UT claimed that in his state there were problems sourcing revenues to specific cities initially. Other discussion points involved the gamut of administrative issues: rates, bases, boundaries, annexations, and the time that either the state or the locally sponsored entity could hold funds.

WA suggested the discussion group list all problems for the states to set up these systems and for the states to decide which model they would incorporate into their legislation.

VI. Secure Email Demonstration.

Chris Lane, MTC IT Director, described the new Tumbleweed Secure Messaging Service. This service is a secure transport service which secures all exchanges of information and all attachments to email messages. Mr. Lane explained that if a message or attachment contains certain criteria the message or attachment will be encrypted.

VII. New Business

There was no new business

VIII. Adjournment.

The meeting was adjourned at 4:44 P.M.

Income and Franchise tax Subcommittee
March 12, 2008
8:30 A.M. to 2:30 P.M.

I. Welcome and Introductions

Wood Miller, Subcommittee Chair, welcomed the attendees.

II. Public Comment

There was no Public Comment at this time.

III. Reports and Updates

A. Report on Uniformity Projects in Process

1. Proposed Model Regulation for Apportionment of Income from the Sale of Telecommunications and Ancillary Services

Sheldon Laskin, MTC Counsel, was the Hearing Officer for this project. Mr. Laskin informed the members of the subcommittee that during the public hearing, Elliott Dubin, MTC Director of Policy Research, made a suggestion, both in writing to the Hearing Officer and at the public hearing, to require that telecommunications service providers attach FCC Form 499A to their state income tax return as this form contains information on wholesale sales by telecommunications service providers. This would replace the use of FCC Table 15.6 which is an industry average. Mr. Laskin stated that he will consider this suggestion, as well as other suggestions from the telecommunications service providers and from state tax agency personnel.

2. Proposed Model Statute for Taxation of Captive Real Estate Investment Trusts.

Bruce Fort, MTC Counsel, told the members of the subcommittee that the major issue of captive REIT's is that the REIT has no tax liability if it distributes its income as a dividend, and the taxable dividends will escape taxation if paid to a captive insurance company, or to an offshore intangible property holding company. He stated that responses to the Bylaw 7 survey are due by April 1, 2008.

3. Model Amendments to Multistate Compact Article IV and NCCUSL UDITPA Effort

Shirley Sicilian, MTC General Counsel, described the origins of this project. The MTC State Tax Compliance Project in 2004 suggested that the UDITPA sections dealing with the sales of intangible property or services should be revised. In 2006, a letter was sent to NCCUSL asking them to work on revising UDITPA. The Executive Committee stated that the scope of the revisions should be limited to apportionment and allocation and in particular to 5 provisions: (1) the definition of gross receipts, (2) the definition of business income, (3) factor weighting, (4) sales factor sourcing for services and intangibles, and (5) section 18. Provisions for combined reporting, nexus, or tax base should not be added to UDITPA. The first meeting of the NCCUSL Drafting Group will take place in Chicago on May 30 and 31.

Ben Miller informed the subcommittee members that all of the NCCUSL drafting committee would be reviewed at their annual meeting and the report should be ready in 2009 at the earliest.

B. Federal Issues Affecting State Taxation.

Roxanne Bland, MTC counsel, presented the report. She noted that there was pressure to move on BATSA and the Mobile Workforce bills although state tax bills have a low priority – the Foreign Intelligence Security Act (FISA) has the highest priority.

1. Business Activity Tax Simplification Act of 2007 (S 1736): A House version, H.R. 5267 introduced by Rep. Boucher (D VA) is substantially similar.
2. Mobile Workforce State Income Tax Fairness and Simplification Act of 2007 (H.R. 3359). This bill would prohibit states from imposing their income tax on non-resident employees who are temporarily in the state for less than 60 days. No compromise has been worked out as yet.

3. Federal Economic Stimulus Legislation and State Decoupling – Most states can impose their income tax on the federal rebate checks but most states are decoupling and allowing residents to receive the rebate checks without state income tax.

IV. Report on Project to Amend MTC Model Financial Institutions Apportionment Rule.

Shirley Sicilian described the meeting held in New Orleans in November of 2007. She said that there are five areas that the working group is looking at:

1. What is a financial institution?
2. Location of loans.
3. The role of credit cards.
4. Location of receipts.
5. Could the project be simplified by looking at what the federal regulatory bodies do?

The working group divided into three subgroups, each of which will meet once a month by teleconference. The Definitions Group will meet at 2:00 P.M on the second Tuesday of the month. The Receipts Factor Group will meet on the fourth Tuesday of the month; and the Property Factor Group will meet on the first Tuesday of the month. There was no public comment.

V. Regulated Investment Company Project.

Bruce Fort is the MTC staff lead on this project. Mr. Fort told the subcommittee members that companies can benefit by establishing a Regulated Investment Company (RIC) to hold intangible property because the RIC enjoys a deduction for dividends paid while the dividend recipient may not be subject to taxation.

Mr. Fort pointed out that establishing an LLP between the corporate owner of a RIC and the RIC can make tracing the income stream quite difficult. He further noted that the application of the MTC's REIT model statute proposal to captive RIC's would be effective in combined reporting states but generally unhelpful in separate entity states because the RIC may not have nexus in those states.

Mr. Fort reported that an informal survey of the legal and audit departments for many states and the MTC's audit staff strongly suggested that the captive RIC tax planning technique is not in current use by taxpayers. Ben Miller of the CA FTB noted that corporate owners of RIC's are filing for refunds claiming that the RIC's were established for a legitimate business purpose, Mr. Fort reported that California significantly reduced its revenue estimates when it adopted a 2004 statute addressing captive RICs because it believed the technique was no longer in use.

The subcommittee discussed the options available to it in light of the evidence that captive RICs do not appear to be a current tax planning technique. Ted Spangler noted that there is only anecdotal evidence that the SEC is pursuing the problem of corporate ownership of RIC's. Mr. Spangler moved that the project be held open until the next meeting so that the states can submit information. The motion carried by voice vote.

VI. Project to Amend MTC Model Regulation IV. 18 (Special Rules).

Bruce Fort informed the committee that Model Regulation IV.18 allows the general apportionment formula to be modified in “rare and unusual circumstances.” The regulation also permits the general apportionment formula to be modified for certain industries. Mr. Fort noted that the states have more special industry apportionment methods than does the MTC; and, that taxpayers have exploited weaknesses in UDIPTA in some instances. He suggested that the provision that requires that the model statute can only be used in unusual factual circumstances be eliminated. He suggested that the members consider the case of *20th Century Fox Film v Oregon*.

The committee members raised several points:

- OR noted that there may be some confusion regarding the MTC project and the NCCUSL project. It was pointed out that NCCUSL is dealing with Model Statutes and the MTC is dealing with Model Regulations
- ID noted that it can be years before a revised UDITPA would be finally adopted by the states.
- KS noted that the Model Regulation should be used by state revenue agencies to stop tax minimization strategies.

Mr. Fort will work with the Working group to present the concerns to the Subcommittee in July for the Subcommittee to decide on the options.

The subcommittees voted to have the working group go forward.

VII. New Business.

Michael Fatale (MA DOR) introduced a potential new project: how to deal with captive insurance companies, usually subject only to gross premiums taxes. Insurance companies can own businesses and the income stream from the businesses will not be taxed. He cited a California case in which an insurance company owned a parking garage and CA wanted to tax the net income of the garage but the court upheld the insurance company’s exemption from income taxes. In MA, the governor’s loophole-closing bill had a provision that stated if an insurance company owned more than 50 percent of a non-flow-through enterprise, the income from that business would be taxed as the income of a general business.

Kansas noted that captive insurance legislation was killed in its legislature. Others suggested that the states should tax the pass-through entities owned by insurance companies – it is the pass-through entities that actually do the investing.

Colorado moved and Kansas seconded a motion that the committee should take up the project with the understanding that more investigation of this problem be undertaken before a final vote is taken to take up this project. The vote was: 15 yes, 0 no, and 1 abstention.

COST suggested that industry representatives be brought into the project as soon as possible.

The meeting was adjourned at 11:55 A.M.

Full Uniformity Committee

March 12, 2008

2:30 P.M. to 5:00 P.M.

I. Welcome and Introductions.

Ted Spangler, Uniformity Committee Chair, welcomed the attendees.

II. Approval of Minutes of the November 2007 Meetings.

Eugene Walborn (MT), Lee Baerlocher (MT), Eric Smith (OR), and Reva Tisdale (ID) should have been listed as attendees.

Ted Spangler moved to defer approval of the minutes until the annual meetings in Santa Fe in July.

III. Public Comment.

There was no public comment at this time.

IV. Executive Director's Report.

Joe Huddleston, MTC Executive Director, told the members that the work of the Technology Committee will continue until an improved secure communications platform can be implemented. He also related that there is a perception by business taxpayers that the MTC does not audit according to the laws of each state participating in an audit, but imposes MTC's concept of what the law ought to be. Mr. Huddleston noted that there are new sovereignty members and other states are increasing their participation.

V. Sales/Use Tax Subcommittee Segment.

Richard Cram (KS), Chair, Sales/Use Tax Subcommittee gave the report. He informed the committee that the responses to the Bylaw 7 survey on the Model Statistical Sampling Statute was due by April 11. He also noted:

- The accommodations intermediaries project is continuing. The subcommittee considered whether to exclude tour operators and travel agents from the project; and, if yes, should the subcommittee define travel agents and tour operators. In addition, the subcommittee decided there should be a dual remittance track model. The subcommittee will report at the annual meetings.

- The subcommittee is looking at three (3) separate models to centralize collection of telecommunications transactions taxes. The drafting group will flesh out options 2 and 3 and report back to the full committee.

VI. Income/Franchise Tax Subcommittee Segment.

Wood Miller (MO), Chair, Income/Franchise Tax Subcommittee gave the report. Mr. Miller told the committee that the subcommittee discussed the Financial Institutions Apportionment of Income project. In addition, the subcommittee decided to keep the RIC's project alive until the annual meeting when the full committee will decide the fate of this project. Further, the subcommittee directed the working group on the project to look at ways to amend Article IV. 18(a) to change the current "rare and unusual circumstances" test. Lastly, the subcommittee voted to take on the project of taxation of insurance company non-premiums income.

Diann Smith, Sutherland, Asbill, and Brennan LLP asked whether the Hearing Officer on the Model Apportionment of the Income of Telecommunication Service Providers project will incorporate the comments of the public into the report. The response was: yes the comments will be in the final report.

Ken Beier, MTC Training Director, described the courses being offered and asked the committee members to request that their states volunteer to host a training course.

VII. New Business.

The Committee voted on the location of the next Winter Program Meeting:

Charleston, SC	7
Seattle, WA	8
Tampa-St. Petersburg	4

VIII. Roundtable Discussion.

The states discussed tax issues and court decisions. The following were some, but not all of the examples of significant tax changes: In MA, the governor proposed combined reporting while that measure failed in NC. MI did away with the Single Business Tax and adopted a corporate income tax with combined reporting and an economic nexus standard. ID is beginning a reform of its financial institutions tax rules. AL won an add-back statute case, now on certiorari, and ID passed an affiliate nexus law.

IX. Adjournment.

MI moved to adjourn the meeting. The motion carried. The meeting was adjourned at 4:15 P.M.

